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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/645,186

08/21/2003

David A. Busche

20703-1

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06/22/2006

BEMIS COMPANY, INC.  
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EXAMINER

AUGHENBAUGH, WALTER

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 06/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/645,186

**Applicant(s)**

BUSCHE ET AL.

**Examiner**

Walter B. Aughenbaugh

**Art Unit**

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-43 and 50-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-43 and 50-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/10/06</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Acknowledgement of Applicant's Amendments***

1. The amendments made in claims 33, 54 and 62 in the Amendment filed April 6, 2006 (Amdt. A) have been received and considered by Examiner.

***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on April 10, 2006 was filed after the mailing date of the previous Office Action on October 6, 2005. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

***WITHDRAWN REJECTIONS***

3. The 35 U.S.C. 112 rejection of claims 33, 54 and 62 made of record in paragraph 9 of the previous Office Action mailed October 6, 2005 has been withdrawn due to Applicant's amendments in claims 33, 54 and 62 in Amdt. A.

***REPEATED REJECTIONS***

***Claim Rejections - 35 USC § 103***

4. The 35 U.S.C. 103 rejection of claims 1-32, 34-43, 50-53, 55-61 and 63-69 made of record in paragraph 11 of the previous Office Action mailed October 6, 2005 has been repeated for the reasons previously made of record.

***NEW REJECTIONS***

***Claim Rejections - 35 USC § 103***

5. Claims 33, 54 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donovan et al. in view of Ramesh et al.

Donovan et al. and Ramesh et al. teach the bag as discussed in regard to claims 1 and 50 in the previous Office Action mailed October 6, 2005.

In regard to claims 33 and 62, Donovan et al. teach that the inner heat sealing layer constitutes 35% of the total film thickness if item 63 of Donovan et al. is the inner heat sealing layer, that the barrier layer, item 68, constitutes 3% of the total film thickness, that the core layer, item 65, constitutes 47% of the total film thickness, that the tie layer constitutes 10% of the total film thickness if item 67 of Donovan et al. is the tie layer, and that the outer heat sealing layer, item 61, constitutes 5% of the total film thickness (col. 11, lines 21-42 and 56-64). Therefore, Donovan et al. and Ramesh et al. fail to teach that the core layer, item 65, constitutes less than 28% of the total film thickness. However, Donovan et al. teach that the core layer, item 65, is an oriented polypropylene layer (col. 11, lines 31-35 and 62-64) and that the multilayer film can provide simple or enhanced barrier properties for maintenance of package contents (col. 9, lines 55-64) and that an oriented polypropylene layer is a high barrier layer (col. 9, lines 65-67). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have varied the thickness of the oriented polypropylene barrier layer of the bag taught by Donovan et al. and Ramesh et al. in order to achieve the desired degree of barrier properties for maintenance of package contents depending on the desired end results and intended use of the package as taught by Donovan et al.

In regard to claim 54, Donovan et al. and Ramesh et al. teach the bag as discussed in regard to claim 53 in the previous Office Action mailed October 6, 2005. At least one other constituent of Donovan et al. is a polyethylene (col. 11, lines 26-31).

***Response to Arguments***

6. Applicant's arguments presented on pages 11-14 of Amdt. A regarding the 35 U.S.C. 103 rejection of claims 1-32, 34-43, 50-53, 55-61 and 63-69 have been fully considered but are not persuasive.

On page 12 of Amdt. A, Applicant argues that Donovan et al. "is not in the field of endeavor of the present invention and should not be used as a primary reference"; however, Donovan et al. is in the field of endeavor of the application since Donovan et al. teach an end-sealed packaging bag. Paragraph 11 of the previous Office Action mailed October 6, 2005. It is stated in paragraph 11 Office Action mailed October 6, 2005 that Donovan et al. fail to teach that the polymeric film is heat shrinkable. Applicant states that Donovan et al. teach away from that which is claimed in claims 22, 23, 68 and 69 without providing support for how Donovan et al. teach away from that which is claimed in claims 22, 23, 68 and 69.

Applicant argues in regard to the rejection of claims 18-20 that "the Examiner has offered no evidence to suggest that [the claimed seal strengths] are the same as those found in either Donovan et al. or Ramesh et al.", but the Office Action does not state that the claimed seal strengths are the same as those found in either Donovan et al. or Ramesh et al.

Applicant states that "[t]he Examiner has misunderstood the term 'polybutylene'" in the fourth to last line of page 12 of Amdt. A, and supports this statement by alleging that "polybutylene" is defined in Applicant's specification as "mean[ing] that a majority of its polymeric units are derived from butene-1", but this is not how Applicant's specification defines "polybutylene". The sentence bridging pages 10 and 11 of Applicant's specification states that "[t]he term 'polybutylene' as used herein includes having polymeric units derived from butene-1

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as the major (75% polymeric units) components”: this statement is not a definition of “polybutylene” as it is used in the application but merely a statement of what is “include[d]” in the group of polymers indicated by the term “polybutylene” as it is used in the application. Since the paragraphs are not numbered in the specification, the paragraph which Applicant refers to as “paragraph [0031]” cannot be ascertained. The ethylene-propylene-butylene copolymer disclosed in Donovan et al. is a polybutylene because it comprises butylene units.

In regard to Applicant’s arguments in the first full paragraph of page 13 of Amdt. A, the tie layer of Donovan et al. (item 63) is peelably bonded to the core layer of Donovan et al. (item 65) because, as shown in Fig. 6, tie layer 63 is a component of sealant layer 62, and core layer 65 is a component of main film substrate 66 (col. 11, lines 21-22 and Fig. 6), and sealant layer 62 seals (which Donovan et al. teach can be sealable or unsealable, col. 6, lines 16-28) the main film substrate 66 used for packages (col. 6, lines 16-28). The teaching of Donovan et al. of at least one peelable seal at col. 6, lines 16-28 is disclosed in the Office Action in the discussion of claims 1 and 50. Hindsight is not relied upon in the rejection since Donovan et al. teach at least one peelable seal at col. 6, lines 16-28, as made of record in the rejection of record.

Regarding Applicant’s comments in the fourth full paragraph of page 13 of Amdt. A, “Ramesh” in the portion of the rejection cited by Applicant clearly should be “Donovan” since the paragraph bridging pages 4 and 5 of the Office Action are directed to Donovan et al. and since Ramesh et al. is not introduced in the rejection until the bottom of page 5 of the Office Action, and “col. 3, lines 8-9” should be “col. 3, lines 58-59”, where “easily-opened” appears in Donovan et al.

Applicant argues that “Examiner’s argument that the heat sealable films of Ramesh et al. equate to the oriented polypropylene film of Donovan et al. is misplaced”, but the Office Action does not state that the heat sealable films of Ramesh et al. are equivalent to the oriented polypropylene film of Donovan et al. Donovan et al. plainly teach that the film is preferably oriented polypropylene (col. 3, lines 65-66), as made of record in the rejection of record. Applicant’s statement that “Donovan et al. does not mention formation of oriented polypropylene, but also refers to orienting in an oven” does not address the rejection of record. Regardless of whether or not Donovan et al. “mention[s] formation of oriented polypropylene”, Donovan et al. plainly teach that the film is preferably oriented polypropylene (col. 3, lines 65-66), as made of record in the rejection of record. Applicant’s statement in the last full sentence of page 13 of Amdt. A are unsupported and do not address the rejection of record (the fact that Donovan et al. plainly teach that the film is preferably oriented polypropylene at col. 3, lines 65-66).

On page 14 of Amdt. A, Applicant argues that “Donovan et al. do not refer anywhere to a ‘tape’”, but the Office Action does not state that Donovan et al. refer to a tape. Applicant states that the statement regarding tape is on page 2 of the Office Action, but it is on page 6 of the Office Action and is made regarding the rejection of claim 3 (claim 7 depends upon claim 3). Citations to Ramesh et al. were inadvertently omitted in the Office Action. Ramesh et al. teach the butt seal tape at col. 5, lines 32-40. In regard to claim 9, the structure of the portion where one of the sides of the film extends outwardly shown in Fig. 1 corresponds to a pull flap as made of record in the rejection of record. Applicant equates the terms “pull flap” and “pull tab” in the first full paragraph of page 14 of Amdt. A, but Applicant has not provided support that these

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terms can be equated and has not explained what structure is intended to be recited by either of those terms.

Applicant states that “the argument that ‘Ramesh et al. include a peelable system’” is erroneous, but this is only a portion of a statement made in the Office Action. The entire statement is “[i]n regard to claims 11 and 12, Donovan et al. teach that the first and second heat seals are peelable seals (col. 6, lines 20-27), and therefore, in regard to claims 13 and 14, the strip film and heat-shrinkable film taught by Donovan et al. and Ramesh et al. include a peelable system”. Applicant has ignored the entire statement and selected a portion of that statement and taken that portion out of context, thereby not addressing the rejection of record.

One of ordinary skill in the art would have recognized to have looked to Ramesh et al. for a teaching of how to modify the bag of Donovan et al. since both Donovan et al. and Ramesh et al. pertain to food packaging that includes oriented polypropylene films. Applicant’s statement in the fourth sentence of the third full paragraph of page 14 is unsupported. The last sentence of that same paragraph is speculative and does not address the particular modification of the bag of Donovan et al. that is proposed in the rejection of record, thereby not addressing the rejection of record. Applicant has not shown any evidence of impermissible hindsight as indicated by Applicant.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

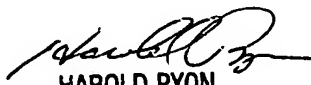
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is to 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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06/19/06

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1772

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